



Mayor and City Council of Cumberland

Mayor Raymond M. Morriss
Councilman Richard J. "Rock" Cioni
Councilman Eugene T. Frazier
Councilman Joseph P. George
Councilwoman Laurie P. Marchini

City Administrator Jeffrey F. Silka
City Solicitor Michael S. Cohen
City Clerk Marjorie A. Woodring

AGENDA

M&CC Special Public Meeting
City Hall
57 N. Liberty Street, Cumberland, MD 21502

DATE: May 23, 2022

I. CLOSED SESSION - 4:00 PM

Convene in public session followed immediately by a motion to close the meeting, pursuant to Section 3-305(b)(7) of the General Provisions Article of the Annotated Code of Maryland, to receive advice from legal counsel.

II. OPEN SESSION - 4:15 P.M.

Pledge of Allegiance

Roll Call

Summary Statement of Closed Meeting(s)

1. Summary Statement of closed meeting held May 23, 2022

New Business

(A) Orders (Consent Agenda)

1. Order 27,008 - authorizing execution of an Indemnification Agreement with DelFest, LLC to release and indemnify DelFest, LLC from any claims arising from the Davisson Brothers Band concert to be held on Hanover Street on May 24, 2022
2. Order 27,009 - lifting the provisions of Section 11-113 of the City Code to allow open containers of alcohol within certain areas of the downtown on Tuesday, May 24, 2022, from 4:30 p.m. through 10:00 p.m., for the DelVille Pub March; notwithstanding that open glass containers shall not be permitted

Public Comments

All public comments are limited to 5 minutes per person

Adjournment

File Attachments for Item:

. Order 27,008 - authorizing execution of an Indemnification Agreement with DeIFest, LLC to release and indemnify DeIFest, LLC from any claims arising from the Davisson Brothers Band concert to be held on Hanover Street on May 24, 2022

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,008

DATE: May 23, 2022

ORDERED, By the Mayor and City Council of Cumberland, Maryland

THAT, the Mayor be and is hereby authorized to execute an Indemnification Agreement by and between Delfest, LLC and the Mayor and City Council of Cumberland to release and indemnify DelFest, LLC from any claims arising from the Davisson Brothers Band concert to be held on Hanover Street on May 24, 2022.

Raymond M. Morriss, Mayor

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (“Agreement”) is made this ___ day of May, 2022, by and between Delfest, LLC (“Delfest”) and Mayor and City Council of Maryland (the “City”), a Maryland municipal corporation.

RECITALS:

WHEREAS, Delfest is holding a special event (the “Event”) on Hanover Street in the City of Cumberland, MD on May 24, 2022, the Event being a live concert (the “Concert”) by the Davisson Brothers Band.

WHEREAS, the Event begins 7:30 p.m. and ends at 10:00 p.m. and it will be performed on Hanover Steet, a City-own right of way. The City is closing Hanover Street so that the Event can be held.

WHEREAS, the Event is an unofficial kickoff for Delfest’s music festival (the “Festival”) which will be held over the Memorial Day weekend.

WHEREAS, the City and Allegany County benefit from the Festival, as it is an economic driver and a valuable source of entertainment for City and County residents as well as persons from other jurisdictions who attend the festival.

WHEREAS, the Event vendors have been required to produce proof of insurance coverage with Delfest being added to the insurance policies as an additional insured.

WHEREAS, the City’s general liability insurer refused to add Delfest as an additional insured.

WHEREAS, Delfest has agreed to accept this Agreement in lieu of adding Delfest as an additional insured on its general liability insurance policy; and

WHEREAS, the City made a commitment to Delfest to grant it the protections provided for hereinafter.

WITNESSETH:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, they hereby agree as follows:

- 1. Recitals.** The Recitals set forth above are not merely prefatory. They are incorporated by reference herein and form a part of this Agreement.
- 2. Release & Indemnification.**

2.1. Release. The City exempts, releases and discharges Delfest, its employees, officers and representatives from and against any and all claims, demands and actions for personal injury, including death, and property damage, arising out of or in any way related to the Event.

2.2. Indemnification. Except as otherwise set forth herein, the City, shall indemnify Delfest for and against all losses, liabilities, claims, damages and expenses occurring at the Event caused to Delfest.

2.3. Limitations/Exceptions. The release and indemnification obligations set forth herein shall not apply to:

- (i) Losses occurring as a result of, as an incident to or arising out of acts or omissions, as an incident to or arising out of incidents occurring outside of the official bounds of the Hanover Street right of way.
- (ii) Losses occurring as a result of acts or omissions occurring at times other than between 6:00 and 10:00 p.m. on May 24, 2022 or at such times the Event is reschedule for if it needs to be rescheduled.
- (iii) Losses arising out of, as an incident to, or as a result of the negligent acts, errors and/or omissions or the willful misconduct of Delfest, its officers, directors, agents, employees, subcontractors, licensees, or invitees.
- (iv) Such other limitations and exceptions as are set forth herein.

3. Local Government Tort Claims Act. This Agreement is subject to the terms of the Local Government Tort Claims Act (*see* Md. Courts & Jud. Proc. Code Ann., Title 5, Subtitle 3)

4. Miscellaneous Provisions.

4.1. Notice. Any notices sent pursuant to this Agreement must be delivered by overnight mail through a widely recognized overnight mail carrier ,like Federal Express or United Parcel Service. or delivered by hand addressed to the appropriate party as follows:

To the City: City of Cumberland
 ATTN: Marjorie Woodring or City Clerk
 City Hall
 57 N. Liberty Street
 Cumberland, MD 21502

With a copy to:

Michael Scott Cohen, City Solicitor
213 Washington Street
Cumberland, MD 21502

To Delfest: Delfest, LLC
c/o _____

4.2. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and assigns.

4.3. Assignment. Neither party may assign, subcontract, transfer or delegate, in whole or in part, its rights or obligations under this Agreement except with the prior written approval of the other.

4.4. Entire Agreement; Modification. This Agreement constitutes the entire agreement of the parties relative to its subject matter. There are no other covenants or agreements, oral or written, regarding the said subject matter. Any changes to this Agreement shall be in writing, signed by both parties.

4.5. Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto and their respective successors and assigns. This Agreement shall not be deemed to benefit or confer and right upon third parties. There are no third-party beneficiaries to the terms of this Agreement.

4.6. Partnership/Joint Venture. This Agreement shall not be construed to create any partnership or joint venture between the parties.

4.7. Applicable Law. The rights and obligations of the parties hereunder shall be governed by and determined according to the laws of the State of Maryland. Any controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof, shall be adjudicated in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County. The parties waive any right to claim that these courts lack personal jurisdiction over them or that they constitute inconvenient forums.

4.8. Remedies. Pursuit by either party of any of the remedies described herein, or otherwise available at law or in equity, shall not preclude pursuit by that party of any other remedy or remedies provided herein or otherwise available at law or in equity. All remedies, rights, undertakings, obligations and agreements shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any party.

4.9. Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of the Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

4.10. Jury Trial. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT.

4.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

4.12. Signing by Facsimile or Other Electronic Means. Each of the parties hereto expressly authorizes and agrees to sign facsimile and/or other electronically transmitted copies or counterparts of this Agreement. Once said facsimile and/or other electronically transmitted signed copies or counterparts are executed by each of the parties hereto, they shall have the same binding effect as would a signed original Agreement once delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures hereto as of the date written beneath those signatures.

WITNESS/ATTEST:

**MAYOR AND CITY COUNCIL OF
CUMBERLAND**

Marjorie Woodring, City Clerk

By: _____
Raymond M. Morris, Mayor

DELFESE, LLC

By: _____

Printed name

Job Title

File Attachments for Item:

. Order 27,009 - lifting the provisions of Section 11-113 of the City Code to allow open containers of alcohol within certain areas of the downtown on Tuesday, May 24, 2022, from 4:30 p.m. through 10:00 p.m., for the DelVille Pub March; notwithstanding that open glass containers shall not be permitted

- Order -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 27,009

DATE: May 23, 2022

ORDERED, By the Mayor and City Council of Cumberland, Maryland,

THAT, the provisions of Section 11-113 of the City Code, entitled "Open Containers of Alcohol," be and are hereby lifted for the DelVille Second Line Pub March on May 24, 2022, from 4:30 p.m. through 10:00 p.m., within the confines of the following areas:

- Mechanic at Bedford Street south to Wineow Street;
- Wineow Street to Winston Street to Centre Street;
- Centre Street to Harrison Street
- Harrison Street East to Queen City Drive
- Queen City Drive north to Baltimore Street;
- Baltimore Street west to George Street;
- George Street north to Butler Alley;
- Butler Alley to Centre Street;
- Centre Street from Frederick Street north to 171 North Centre Street
- Bedford Street from Centre Street to Mechanic St.
- Extension off of Queen City Drive to Queen City Pavement / Gulf Memorial Drive.

Notwithstanding the foregoing, open glass containers shall not be permitted in the area defined above and Section 11-113 (a) of the City Code shall remain in force and effect as to glass open containers of alcoholic beverages in that area.

Raymond M. Morriss, Mayor

***Map attached**

